

DECISION



17201
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest of Bid Rejection as Nonresponsible]

FILE: B-200130

DATE: March 2, 1981

MATTER OF: Forest & Land Managers, Inc.

DLG 06242

DIGEST:

1. Where small business bidder failed to file application with Small Business Administration (SBA) for possible issuance of certificate of competency (COC), contracting officer's determination that bidder was nonresponsible is regarded as having been affirmed, since such failure is analogous to SBA refusal to issue COC.
2. Whether bidder meets experience requirements in IFB is question of responsibility, not responsiveness, and, therefore, information outside bid may properly be considered.

DLG 06243
Forest & Land Managers, Inc. (F&L), protests the award of a contract to Haszel & Frings Soil Contractors (H&F) under invitation for bids (IFB) R9Z-80-33, issued by the United States Department of Agriculture, Forest Service, for an Order 3 Level Soil Survey at the Nicolet National Forest, Wisconsin.

F&L contends that the rejection of its low bid as nonresponsible was based erroneously upon minimum experience requirements which did not appear in the IFB. F&L also contends that H&F's bid was nonresponsive because the experience questionnaire submitted with H&F's bid did not contain the required certification that the firm met the definitive experience criteria in the IFB. F&L takes the position that it was improper for the contracting officer to look outside the bid to determine compliance with the experience criteria. As discussed below, the protest is denied.

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Clause 10(i) of the IFB provides that, to be considered for award, the bidder was required to have the following minimum experience qualifications:

"(1) one member of the survey party * * * must have at least 3 years experience in leading a formal soil survey of at least 300,000 acres. (2) one member of the survey party * * * must have at least 5 years soil survey experience in the heavily wooded counties of Northern Wisconsin or Upper Peninsula of Michigan."

Bidders were required to submit an experience questionnaire to determine the bidders' ability to complete the contract successfully. The Forest Service expressly reserved the right to reject any bid in which facts as to business organization, workforce, financial resources, experience or past performance on previous similar contracts, compared with the requirements of the solicitation, justified such rejection. Division 290 of the specifications, entitled "Personnel Qualifications," repeated the above minimum experience requirements as an obligation of the "contractor or his employees."

The contracting officer states that F&L's experience questionnaire did not indicate that the firm's proposed workforce possessed the qualifications and experience required. Therefore, additional information was requested from F&L. After considering the material furnished, which included F&L's adding one person to the workforce, the contracting officer still was not convinced that the firm met the experience requirements of the IFB.

Since F&L is a small business concern, the contracting officer referred the matter to the Small Business Administration (SBA), for the possible issuance of a certificate of competency (COC). The referral emphasized the importance of experience in the survey area and detailed the environment and terrain of that area. F&L did not file for the COC because it felt

the Forest Service technical evaluator was unreasonably attempting to disqualify the firm and the time and expense involved were not justified. When the SBA notified the contracting officer that F&L declined to file for a COC, he determined the firm nonresponsible and awarded the contract to H&F.

The record does not support F&L's contention that the referral to SBA showed that the contracting officer's nonresponsibility determination was based upon new experience requirements which did not appear in the IFB. The referral contained merely a description of the area to be surveyed and a justification for the experience requirements tied to the specific area.

Furthermore, because F&L failed to file for a COC, we find no legal basis to question the nonresponsibility determination on F&L. Under the Small Business Act of 1977, Pub. L. No. 95-89, § 501, 91 Stat. 561 (1977), the SBA has conclusive authority to issue or deny a COC. R & O Industries, Inc., B-188476, March 25, 1977, 77-1 CPD 215; Indian Made Products Company, B-187461, October 5, 1976, 76-2 CPD 310. A small business which fails to file a COC application with SBA does not avail itself of its administrative remedy provided by statute and regulation. This relief is intended to give small business concerns a degree of protection against a contracting officer's unreasonable determination as to their responsibility, and we believe a small business concern's failure to avail itself of this process provides a sufficient basis for dismissing any protest to this Office concerning its rejection as a nonresponsible bidder. See L&M Services, Inc., B-190873, January 17, 1978, 78-1 CPD 41. Moreover, we have found the failure to file for a COC is analogous to a refusal by SBA to issue a COC and an affirmation of the contracting officer's determination of responsibility. See Davidson Optronics, Inc., B-196383, December 19, 1979, 79-2 CPD 420.

F&L's contention that H&F's bid was nonresponsive is without merit. Contrary to F&L's assertions, the IFB required that bidder's submit experience information to determine the bidder's ability to perform the contract, or responsibility.

It is well settled that such solicitation provisions requiring the submission of information necessary to determine compliance with specified bidder experience requirements pertain to responsibility, not responsiveness. This information need not be submitted with the bid but may be furnished up to the time of award. This is so regardless of any solicitation language requiring submission of the information with the bid. See Thermal Control Inc., B-190906, March 30, 1978, 78-1 CPD 252.

(Consistent with the above cases and its treatment of F&L, the Forest Service properly resolved the responsibility of H&F on some information outside the bid. F&L has not submitted any evidence to show that H&F failed to comply with the experience requirements. Therefore, we find no legal basis to question the award to H&F as the low responsive and responsible bidder.)

Accordingly, the protest is denied.

Milton J. Arowan

Acting Comptroller General
of the United States